

**United States Department of Labor
Employees' Compensation Appeals Board**

G.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kingsfield, MI, Employer**

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**Docket No. 16-0195
Issued: April 18, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 10, 2015 appellant filed a timely appeal of an October 28, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On September 17, 2014, appellant a 53-year-old window clerk, filed an occupational disease claim (Form CA-2) alleging that he developed right arm and shoulder conditions causally related to employment factors, which required the repetitive use of his arms.² He alleged that he

¹ 5 U.S.C. § 8101 *et seq.*

² The record reflects that appellant has filed prior claims with OWCP, alleging both traumatic and occupational injuries.

first became aware of his condition and its relation to his employment on January 1, 1997. Appellant did not stop work. The employing establishment controverted appellant's claim contending that it was untimely filed.

In support of his claim, appellant submitted a February 21, 2012 report from Dr. James N. Grace, a Board-certified orthopedic surgeon. Dr. Grace reviewed the history of a February 2007 right shoulder injury, the effects of which he noted had not improved, and a January 2009 left shoulder repair, which he noted had healed satisfactorily. Based on the results of a January 26, 2012 magnetic resonance imaging (MRI) scan, he diagnosed a superior labral from anterior to posterior (SLAP) tear and recommended a shoulder arthroscopy with a labral repair, similar to what appellant had undergone with his left shoulder. Dr. Grace concluded, with "a reasonable degree of medical certainty that the repetitive work of his right shoulder led to the labral tearing in the right shoulder." Further, he added that the "highly repetitive nature" of appellant's work aggravated and accelerated his right shoulder condition, for which he recommended surgery.

By letter dated November 19, 2014, OWCP advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, including an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit this evidence within 30 days.

In an October 22, 2014 report, received by OWCP on December 16, 2014, Dr. Robert Blotter, Board-certified in orthopedic surgery, advised that appellant had been experiencing increasing right shoulder pain since he began working for the employing establishment 21 years ago. Appellant related that the pain became worse in 2007 when he lifted a heavy object too quickly. He underwent surgery on the right shoulder in December 2012 to repair a SLAP tear. Appellant reported that he underwent a similar procedure on his left shoulder in 2009. Dr. Blotter advised that appellant had been diagnosed with shoulder dyskinesia and had undergone multiple sessions of physical therapy, all without improvement of his symptoms. He obtained x-rays which showed a normal glenohumeral joint and some acromioclavicular joint arthrosis. Dr. Blotter advised that he would consider having appellant undergo an MRI scan to see if any change had occurred to his labrum or his rotator cuff since his last surgery. He noted that appellant believed that his job sorting mail on a machine was the activity which aggravated his right shoulder.

In a January 7, 2015 report, Dr. Blotter noted that appellant was still experiencing pain in his right shoulder. Appellant was forced to discontinue work for the previous two weeks to help get his shoulder pain under control. He related that the pain intensified when he returned to work in December 2015 and increased his activities. Dr. Blotter noted that the SLAP injury appellant sustained in 2007 caused a right shoulder problem, but advised that the repetitive nature of his work contributed heavily to his condition. He reported that appellant continued to experience right shoulder pain and continued to have trouble performing his regular work activities of his regular duty. Dr. Blotter asserted that appellant was going to have trouble continuing to do his present job without significant light-duty restrictions that limited his right shoulder to sedentary activity, no repetitive activity with the right upper extremity, and no repetitive lifting. He advised that he would schedule appellant for an MRI scan arthrogram.

By decision dated January 23, 2015, OWCP denied the claim, finding that while it was time filed and the evidence supports that the injury and/or events occurred as described, appellant failed to submit sufficient medical evidence establishing that he sustained a medical condition in the performance of duty.

On January 30, 2015 appellant requested an oral hearing before an OWCP hearing representative, which was held on August 13, 2015.

In a March 4, 2015 report, Dr. Blotter asserted that appellant continued to have limitations in his right shoulder, but was able to work light duty. He advised that appellant underwent an MRI scan arthrogram, which showed a recurrence of his SLAP tear, some early degenerative changes of his humeral head, and a paralabral cyst at the inferior anterior part of the glenoid which he attributed to his SLAP tear. Dr. Blotter noted that the rotator cuff was intact. He advised that appellant had right shoulder pain with recurrent SLAP tear and early degenerative arthritis of his inferior humeral head. Dr. Blotter recommended that appellant continue with modified activity within the bounds of his light-duty assignment. He opined that a repeat arthroscopy to repair of the SLAP injury was probably not advisable because it might accelerate any arthritic changes which had occurred there. Dr. Blotter concluded that appellant had a chronic condition from his years of repetitive activity at the employing establishment. He advised that appellant could probably work indefinitely within the limitations of his disability or attempt another surgical procedure, but noted that there was no guarantee he could return to full duty.

By decision dated October 28, 2015, an OWCP hearing representative affirmed the January 23, 2015 decision. She found that there was no rationalized medical evidence of record establishing an injury causally related to factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the

³ *Supra* note 1.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷

ANALYSIS

The Board finds that appellant has failed to submit any medical opinion containing a rationalized, probative report which relates any claimed condition to factors of his federal employment. For these reasons, he has not discharged his burden of proof.

Dr. Grace reported on February 21, 2012, with "a reasonable degree of medical certainty" that the repetitive nature of appellant's work duties resulted in the SLAP tear. However, he did not provide a description of the employment factors and failed to explain the mechanism of injury by detailing how the established employment factors would cause the diagnosed condition.⁸ The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.⁹ As Dr. Grace's report lacks the necessary medical rationale, it is insufficient to establish appellant's claim.

Appellant submitted a series of reports dated October 22, 2014 and January 7 and March 4, 2015 reports from Dr. Blotter. Dr. Blotter related appellant's complaints of right shoulder pain and presented diagnoses of recurrence of his SLAP tear, some early degenerative changes of his humeral head, and a paralabral cyst, but did not provide a rationalized medical opinion that these findings were causally related to factors of his employment. In his October 22, 2014 report, he noted that appellant had been experiencing increasing right shoulder pain since he began working for the employing establishment. Dr. Blotter advised that the pain became worse in 2007 when appellant lifted a heavy object and underwent right shoulder surgery in December 2012 to repair a SLAP tear in his right shoulder. He reported that appellant had

⁶ *Id.*

⁷ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁸ *See V.N.*, Docket No. 16-0238 (issued March 1, 2016).

⁹ *Id.*; *see also M.H.*, Docket No. 12-733 (issued September 5, 2012).

been diagnosed with shoulder dyskinesia and that extensive physical therapy had not improved his symptoms. Dr. Blotter noted in his January 7, 2015 report, that appellant was still experiencing right shoulder pain, which intensified when he returned to work in December 2014 and increased his activities. He opined that the SLAP injury appellant sustained in 2007 caused a right shoulder problem and that the repetitive nature of his work contributed to his condition. Dr. Blotter reported that appellant continued to have right shoulder pain and continued to have trouble doing his regular work activities. He restricted appellant from repetitive lifting and engaging in repetitive activity with the right upper extremity. In his March 4, 2015 report, Dr. Blotter noted that appellant underwent an MRI scan arthrogram, which showed a recurrence of his SLAP tear, some early degenerative changes of his humeral head, and a paralabral cyst at the inferior anterior part of the glenoid. He reported that appellant had right shoulder pain with recurrent SLAP tear and early degenerative arthritis of his inferior humeral head. Dr. Blotter opined that appellant had a chronic condition due to his years of repetitive activity at the employing establishment. He asserted that appellant could probably continuing working light duty within his current limitations or attempt another surgical procedure; Dr. Blotter opined, however, that there was no guarantee that surgery would enable him to could return to full duty.

Dr. Blotter's reports do not provide a probative, rationalized medical opinion that appellant's claimed condition or disability was causally related to employment factors. His opinion on causal relationship is of limited probative value as it does not contain any medical rationale how or why appellant's claimed right shoulder condition was currently affected by or related to factors of employment.¹⁰ Dr. Blotter's opinions state conclusions, but offer no medical explanation as to how appellant's alleged work duties physiologically caused the diagnosed conditions of recurrent SLAP tear and early degenerative arthritis of his inferior humeral head. Medical opinion evidence submitted to support the claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment duties physiologically, caused or aggravated his shoulder condition.¹¹

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹² Dr. Blotter did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition.¹³ His reports thus did not constitute adequate medical evidence to establish that appellant's claimed condition was causally related to his employment.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

¹¹ *See D.B.*, Docket No. 15-1506 (October 26, 2015).

¹² *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹³ *E.R.*, Docket No. 15-1815 (issued December 24, 2015).

sufficient to establish causal relationship.¹⁴ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim, however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed condition was causally related to his employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish an injury condition was causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Supra* note 11.